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August 10, 2010

Re: STB Docket No. AB-1043 (Sub-No. 1)

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

SENT BY
Office of the Clerk
AUG 10 2010
Public Room

Re: STB Docket No. AB-1043 (Sub-No. 1)
Montreal, Maine & Atlantic Railway, Ltd. – Discontinuance Of Service And
Abandonment – In Aroostook And Penobscot Counties, ME

Dear Ms. Brown:

In accordance with the decisions served July 20th and 23rd in the above referenced proceeding, enclosed is an original of the "Reply Comments Of Kansas City Southern" to be filed in the above referenced proceeding. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,

William A. Mullins
William A. Mullins

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (SUB-NO. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.
- DISCONTINUANCE OF SERVICE AND ABANDONMENT -
IN AROOSTOOK AND PENOBSCOT COUNTIES, ME**

REPLY COMMENTS OF KANSAS CITY SOUTHERN

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Attorneys for Kansas City Southern

Dated: August 10, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-1043 (SUB-NO. 1)

**MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.
– DISCONTINUANCE OF SERVICE AND ABANDONMENT –
IN AROOSTOOK AND PENOBSCOT COUNTIES, ME**

REPLY COMMENTS OF KANSAS CITY SOUTHERN

Comments were received in this proceeding on July 20th and 23rd, Kansas City Southern (“KCS”) files these reply comments as an interested party with respect to whether the Surface Transportation Board (“Board”) has “authority to order access over a carrier’s lines into a foreign country.” None of the August 3 comments supporting Maine’s request for forced cross-border trackage rights establish any legal basis for the Board to claim such authority.¹

**No Commentor Has Presented Legal Authority for the Board to Reach Across the
Border by Ordering Access by One Carrier to Another Carrier’s Lines Outside the U.S.**

As highlighted in KCS’s initial comments in this matter, 49 U.S.C. §10501(a)(2) explicitly states that the Board’s jurisdiction “applies only to transportation in the United States.” None of the parties filing comments in response to the Board’s July 20th decision in this matter have shown otherwise. Indeed, the State of Maine explicitly admits that, “[T]he Board would not have jurisdiction over any necessary rights in Canada.” State of Maine August 3, 2010 comments in this proceeding (“Maine comments”), at 9.

¹ The Kansas City Southern Railway Company (“KCSR”), a subsidiary of KCS, is a party to the reply comments being filed herein by the Association of American Railroads (“AAR”). KCSR fully supports AAR’s reply comments. As with KCS’s initial comments, these reply comments address only whether the agency has authority to order access over rail lines in a foreign country.

Nevertheless, Maine and several other commentators seek to justify forcing access across the border on the basis that the Board would not be granting trackage rights, but rather would be ordering Montreal, Maine & Atlantic Railway, Ltd. (“MMA”), a carrier that is subject to the Board’s jurisdiction, to grant trackage rights on its lines in a foreign country. This is a distinction without a difference, and cannot be used to extend the Board’s authority beyond the limits explicitly set by Section 10501(a)(2).

Plainly, no matter how the Board would attempt to disguise its actions, what it is being asked to do if it granted the relief requested by the State and various commenting shippers, is ordering access in another country. The State’s Offer of Financial Assistance stated that it was “conditioned on ... granting the State’s new operator overhead trackage rights over the northern and southern ends of MMA’s remaining system.” Or, as Maine said in its August 3 comments, “The OFA included a request that the Board *impose a trackage rights* condition as a term of the OFA.” Maine comments at 2 (emphasis added). Moreover, Maine argues that the Board would have continuing authority to control the terms of the trackage rights. Maine comments at 11. Other commentators likewise ask the Board to set the trackage rights rates and otherwise exert continuing control over the trackage rights – trackage rights that would apply, in part, in a foreign country.

The Board’s July 20 order properly characterized the cross-border access issue in this case, asking what was the Board’s “authority *to order access* over a carrier’s lines into a foreign country.” July 20th decision at 3 (emphasis added). Clearly the Board recognizes that it is being asked to force access over track running across the border and into Canada. Moreover, the August 3 comments make clear that this would not be a one-time act; rather, Maine and the shipper commentators want the Board to continue to control the exercise of such rights, setting

dispatching priorities, payment terms, and in various other ways exerting continuing control of rail operations in Canada, regardless of what the laws of Canada have to say.

Conclusion. Section 10501(a)(2) makes clear that the Board's authority is territorially limited to the borders of the United States. The Board simply has no authority to regulate rail operations in a foreign country, either by directly issuing an order creating trackage rights in a foreign country or indirectly by ordering a carrier subject to the Board's jurisdiction to "voluntarily" (as one commenter puts it) grant trackage rights in a foreign country as a condition of its U.S.-based action. The result is the same: the Board would be extending its authority into Canada beyond the limits set by Section 10501(a)(2).

Respectfully submitted,

William A Mullins
enc
William A. Mullins

August 10, 2010

CERTIFICATE OF SERVICE

I have this day served a copy of the foregoing Reply Comments Of Kansas City Southern upon all other parties of record by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Dated: August 10, 2010

William A Mullins *me*
William A. Mullins

Attorney for Kansas City Southern